IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12214 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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VINODKUMAR VALLABHBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 12214 of 2001
MR PM BHATT for Petitioner No. 1-6
MS SONAL VYAS, A.G.P. for Respondent No. 1-2
NOTICE SERVED BY DS for Respondent No. 3-4

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 31/07/2002

ORAL JUDGEMENT

1. Rule. Ms.Sonal Vyas, learned A.G.P. waives service of Rule.

2. Writ Petition i.e. Special Civil Application No. 8359 of 1988 filed by 3 petitioners, namely, (1) Ratilal Chandulal Shah, (2) Paresh Ratilal Shah and (3) Mitrasen Ratilal Shah, original owners of the land in question

came to be disposed of on 3.11.1995 by S.K.Keshote, J. as having been abated in view of the Urban Land (Ceiling & Regulation) Repeal Act, 1999. In that petition no reply was filed by the respondent Government nor any statement was made before the Court that the possession of the disputed land had been taken by them.

3. The present petitioners claimed to be in possession of the land in question through one Shri Amarsing Bhoi. However, as per the contention of the respondent Government, Amarsing Bhoi got the land from the aforesaid three petitioners Shri Ratilal Shah and two others. This was objected by learned counsel Shri Bhatt for the petitioners as the form was filled in by Amarsing Bhoi as owner of the land. The prayer made in this petition is to restrain the Government from disturbing the physical possession of the land in question held by the petitioners in view of the provisions of Section 3(2) of the Act No.15 of 1999 which is applicable to the land in question and for declaration that the petitioners are in actual physical possession of the land and the Government has not taken over possession prior to 30th March, 1999.

4. It may be stated that in this case Reply Affidavit is filed by Ms.Urmilaben Patel on behalf of the respondent wherein it has been specifically contended that the land was already vested with the Government and the possession is with them.

5. When there is dispute on the point of possession then the said dispute cannot be resolved by this Court in its writ jurisdiction under Article 226 of the Constitution of India. If the petitioners are in actual possession of the land then they shall remain in possession of the land. However, if the possession of the land in question is already taken over by the State Government and vested with it, then it shall remain with the Government. Except this, nothing more can be done in the matter and accordingly this petition is disposed of. Rule made absolute to the aforesaid extent. No order as to costs.

Date : July 31, 2002 (B.J.Shethna, J.)

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